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UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

BMG MUSIC d/b/a J RECORDS,

Plaintiff,

v.

J7 RECORDS, INC.,

Defendant.

Case No. 07 Civ. 6076 (MGC)

**DECLARATION OF DAVID DONAHUE IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS**

I, David Donahue, hereby declare under penalty of perjury as follows:

1. I am a member of the Bar of the State of New York and of the law firm of Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, New York 10017, attorneys for plaintiff BMG Music d/b/a/ J Records ("J Records" or "Plaintiff") in the above-captioned action.

2. This declaration is based on my own personal knowledge and on my review of publicly available records and is submitted in opposition to the Motion to Dismiss for Lack of Personal Jurisdiction filed by defendant J7 Records, Inc. ("Defendant") in this action.

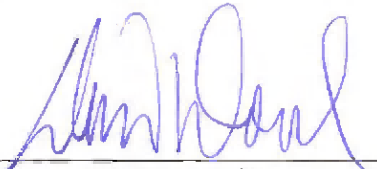
3. On November 9, 2007, I asked Defendant's counsel of record, Oren J. Warshavsky, Esq., for Defendant's consent to conduct jurisdictional discovery concerning Defendant's use of the J7 RECORDS mark. I explained to Mr. Warshavsky that the purpose of such jurisdictional discovery would be to develop a full record on which the Court could assess the merits of Defendant's Motion and the matters discussed therein. Mr. Warshavsky advised that he doubted his client would consent to such jurisdictional discovery, but that he would get back to me soon with an answer. Defendant did not provide a definitive response to Plaintiff's request for consent to take jurisdictional discovery until the November 29, 2007 status conference before the Court, at which time Defendant's counsel advised the Court that Defendant objected to Plaintiff's request for jurisdictional discovery.

4. Attached as Exhibit A is a true and correct copy of the December 17, 2007 joint status letter that the parties submitted pursuant to the Court's instructions at the November 29, 2007 status conference.

5. On December 20, 2007, Plaintiff filed a Notice of Opposition before the Trademark Trial and Appeal Board (the "TTAB") of the United States Patent and Trademark Office opposing registration of Defendant's application to register the J7 RECORDS mark. That same day, the TTAB issued a Scheduling Order requiring Applicant to answer the Notice of Opposition within forty days. Defendant failed to file an answer within the deadline set by the TTAB. Accordingly, on February 16, 2008, the TTAB issued a Notice of Default, which gave Defendant thirty days to show cause why default should not be entered against it. Thereafter, Defendant filed a Motion to Set Aside Default, an Answer to the Notice of Opposition, and a Request for Extension of Time in Which to File Answer to Notice of Opposition. Defendant included with such papers, *inter alia*, an Affidavit of Verification executed by Tireka Cobb on

March 14, 2008. A copy of Ms. Cobb's Affidavit of Verification, which I obtained from the TTAB's public website at <http://ttabvue.uspto.gov>, is attached hereto as Exhibit B.

Executed under penalty of perjury this 2nd day of April 2008 at New York, New York.


David Donahue